

Appeals from decision of the Utah State Office, Bureau of Land Management, requiring acceptance of stipulations in noncompetitive oil and gas lease. U-47884.

Set aside and remanded.

1. Environmental Quality: Generally -- Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Stipulations
The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper Departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

APPEARANCES: James M. Chudnow, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

James M. Chudnow appeals from a decision dated July 17, 1981, of the Utah State Office, Bureau of Land Management (BLM), requiring execution of no surface occupancy stipulations as a condition to the issuance of oil and gas leases pursuant to lease offer U-47884.

In his statement of reasons, appellant states that he has no desire to cause permanent damage to any valuable landscapes, and he had purposely plotted his filing to be essentially outside the areas that BLM's oil and gas plat maps show "designated as North Escalante Canyon Outstanding Natural Area." Appellant feels that somewhat less restrictive "stipulations" than a blanket "No Surface Occupancy" could be devised which would both allow possible mineral development while at the same time allowing for environmental concerns.

[1] The Secretary of the Interior has the discretion to refuse to issue oil and gas leases even where the lands have not been withdrawn from the operation of the mineral leasing laws. Udall v. Tallman, 380 U.S. 1, 4 (1965), rehearing denied, 380 U.S. 989 (1965). If the Secretary decides to issue a lease, he may require the execution of special stipulations to protect environmental and other land use values. Vern K. Jones, 26 IBLA 165 (1976); Bill J. Maddox, 22 IBLA 97 (1975); 43 CFR 3109.2-1. However, proposed special stipulations must be supported by valid reasons which reflect due regard for the public interest. Such stipulations will be upheld on appeal only if the record shows that BLM adequately considered the factors involved and if they reflect a reasonable means to accomplish a proper Departmental purpose. H. E. Shillander, 44 IBLA 216 (1979); Neva H. Henderson, 31 IBLA 217 (1977); A. A. McGregor, 18 IBLA 74 (1974).

In its decision concerning U-47884, BLM held that unless a no surface occupancy stipulation were included it would not be in the public interest to issue a lease. It pointed out that an oil and gas environmental analysis had been prepared for the lands. The decision stated:

The E 1/2 E 1/2 Sec. 35, T. 35 S., R. 5 E., SLM, Utah, and Sec. 5, T. 36 S., R. 6 E., SLM, Utah, have been identified as having outstanding resource values incompatible with surface disturbance. The resource values would be irreparably damaged or destroyed if any surface disturbance is allowed.

The North-Escalante Canyon Outstanding Natural Area was given special designation under 43 CFR 2071.1(b)(1) in December 1970, to maintain scenic splendor and natural condition. The area is made up primarily of the drainages of the Escalante River. It is nearly roadless and contains few trails along the Escalante drainage and few livestock trails leading to the higher mesa tops. The canyon walls are highly colored and the erosion within the channel has sculptured out many interesting rock formations and meanders which are interesting to the increasing number of backpackers visiting the area. Several clear perennial streams flow within the area. The area is essentially free from man's influence and is essentially the same as it was 100 years ago. The Escalante River and its side drainages qualify for study for possible inclusion within the Wild and Scenic River System. The area is one of the most popular primitive hiking areas in the district.

Much of the pristine and primitive condition of this area would be lost through oil and gas operations. Visual scars would remain long past exploration or operative periods in slickrock areas. Existing vegetation would be damaged or destroyed and would be especially damaging to riparian vegetation in the canyon bottoms. Existing archeological values could be lost and the visual quality of the highly scenic area would be reduced. Values within the Glen Canyon National Recreation Area could be damaged as this area borders the National Resource Area. Accordingly, it has been determined that a lease should not be issued authorizing disturbance of the surface.

This Board has held that oil and gas lease offers for land within an area under study for possible inclusion in the wild and scenic rivers system under 16 U.S.C. § 1271 (1970) may be rejected in exercise of the Secretary's discretion to protect the areas. E.g., Rosita Trujillo, 21 IBLA 289 (1975).

BLM, as manager of the public lands, must consider all available information when it weighs the various uses of the land. It has not shown that it did so here. The oil and gas environmental analysis is not a part of the record. Appellant's plotting of the land covered by his filing to avoid the North Escalante Canyon Outstanding Natural Area constitutes a showing that BLM did not adequately consider all the factors involved. The Utah State Office, in its decision requiring the no-surface occupancy stipulation, has not shown that it considered all information available to it and has adequately weighed the factors involved. Although it has been held proper to reject an oil and gas lease offer to protect a proposed wild and scenic river corridor, no such proposal has yet been made for the river. No identification of the "National Resource Area," referred to in the decision, has been provided.

We have no alternative but to set aside the BLM decision and remand this case for reconsideration of the need for stipulations. If BLM decides again to impose no surface occupancy stipulations, the decision and record must provide adequate justification for this imposition and show that BLM has considered less stringent stipulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded to the Utah State Office for consideration consistent with the views expressed herein.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge

